

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



March 23, 2020

VIA E-MAIL

Erik B. Jacobson
Director, Regulatory Relations
Pacific Gas & Electric Company
PO Box 770000
Mail Code B23A
San Francisco, CA 94177

Clay Faber
Director, Federal & CA Regulatory
San Diego Gas & Electric Company
8330 Century Park Court
San Diego, CA 92123-1548

Laura Genao
Director, State Regulatory Affairs
Southern California Edison
601 Van Ness Avenue, Suite 2030
San Francisco, CA 94102

Ronald van der Leeden
Director, Regulatory Affairs
Southern California Gas Company
555 W. Fifth Street, GT 1406
Los Angeles, CA 90013-1011

Dan Marsh
Manager, Rates & Regulatory Affairs
Liberty Utilities (California)
933 Eloise Avenue
South Lake Tahoe, CA 96150

Etta Lockey
Vice President, Regulation
Pacific Power
825 NE Multnomah, Suite 2000
Portland, OR 97232

Keith Switzer
Vice President of Regulatory Affairs
Bear Valley Electric Service
Golden State Water Company
630 East Foothill Boulevard
San Dimas, CA 91773

Valerie Ontiveroz
Regulatory Manager, California
Southwest Gas Corporation
5241 Spring Mountain Road
Las Vegas, NV 89193-8510

SUBJECT: Assurances to Energy Savings Assistance (ESA) contractors during the COVID 19 pandemic

I write to you in response to Governor Gavin Newsom's proclamation of a state of emergency in California due to the spread of COVID-19. I request that you act on the assurance to the Energy Savings Assistance (ESA) contractors described in this letter immediately; the measures described in this letter will be submitted to the CPUC for a vote in the near future.

On March 4, 2020, Governor Newsom declared a State of Emergency in California related to COVID-19. On March 12, 2020, Governor Newsom issued a new Executive Order recognizing that individuals exposed to COVID-19 may be unable to report to work due to illness or quarantines, and ordering numerous measures including social distancing. On March 16, 2020, Governor Newsom issued an Executive Order requesting that the CPUC monitor the measures undertaken by public and private utility providers to implement customer service protections in response to COVID-19. On March 19, 2020, Governor Newsom ordered all residents to heed State public health directives, including the order for all individuals living in the state to stay home or at their place of residence except as needed to maintain continuity of operations at the federal critical infrastructure sectors ("Stay at Home" order).

As of March 23, all four large Investor Owned Utilities (IOUs)¹ have suspended activities requiring face-to-face customer visits to implement their Energy Savings Assistance (ESA) programs. We understand the IOUs are taking these actions in an effort to follow the guidance of local, state and federal government, health, and emergency response agencies. On March 18, 2020, recognizing "many ESA contractors are, out of economic necessity, issuing layoff notices to ESA workers at this time," The East Los Angeles Community Union et. al. filed a Joint Emergency Motion requesting the CPUC to "direct the IOUs to continue payments to ESA contractors so that their workers can survive this temporary crisis by being able to pay for food, housing, and healthcare until the program is able to restart."² It is clear that the response to COVID-19 will be extremely disruptive to all Californians and will impact many Californians' ability to work, including the contractor community delivering ESA programs and other Energy Division programs.

Due to the size of the ESA program workforce and its dependence on the ESA program funding, the large fraction of this workforce which are small businesses and community based organizations training a local workforce with job skills, and the 2020 ESA household treatment goals, the CPUC requests Pacific Gas and Electric Company, Southern California Edison, Southern California Gas Company, and San Diego Gas & Electric to provide specific assurance to help ensure the economic stability of the ESA program's workforce. In addition, IOUs should maximize effort to shift from face-to-face marketing, outreach, and education activities to virtual mechanisms.³

As soon as practicable, but no later than 24 hours upon receipt of this letter, the four large IOUs are requested to offer and discuss with eligible contractors an advance payment of 30 days, as further described below. If acceptable to the Prime Contractors, IOUs and Prime Contractor are requested to take action to implement with no further guidance needed from CPUC. Should the Prime

¹ Pacific Gas and Electric, Southern California Gas, Southern California Edison, and San Diego Gas & Electric

² TELACU et. al., Joint Emergency Motion filed to proceeding A.19-11-003 "Application of Pacific Gas and Electric Company for Approval of Energy Savings Assistance and California Alternate Rates for Energy Programs and Budgets for 2021-2026 Program Years" on March 18, 2020

³ IOUs also reported to CPUC Energy Division via email on March 20, 2020 of their communications with their implementer contractors/vendors to Energy division state that contractor invoices for completed work will continue to be processed and paid by IOUs during this time. We expect IOUs to abide by this measure as well.

Contractor find this solution unacceptable, and have a practicable solution as an alternative, this should be proposed by the Contractors' IOUs to the Director of the CPUC Energy Division within three days of receipt of this letter and is subject to CPUC approval.

The advance should be offered to eligible contractors, i.e. those entities that have been directed by the IOUs to suspend work in response to COVID-19 and hold existing contracts with the IOUs to implement ESA programs in 2020. In the meantime, the CPUC, the ESA Program Administrators, implementors, and contractors should continue to coordinate on potential longer-term measures that may be implemented to ensure the stability of the programs and the workforces. I anticipate that the measures described in this letter will be brought before the CPUC so it can take action, and that anticipated action may also be the vehicle for any additional longer-term mechanisms.

The specifics of the measures I am asking you to implement are as follows:

- Offer a 30-day advance payment to each eligible entity holding the prime contract with the IOU [hereafter referred to as Prime Contractor].
- The advance payment should cover the labor costs plus costs critical to sustaining the workforce (e.g., employer's contribution to health care premium).
- The payment should be calculated by the IOU as the average monthly pay (average over the 2019 program year for ESA program work) to the Prime Contractor.
- As this calculation by the IOU may exceed labor costs and overhead costs needed to sustain that labor (assuming a 70 percent to 30 percent labor cost to material cost split), the Prime Contractor can choose to accept a smaller advance payment sum.
- The IOU and Prime Contractor should track the balance of this advance payment over time, as the Prime Contractor works to decrement this "net funds advanced balance" to zero.
- The Prime Contractor should zero-out the net funds advanced balance by a date negotiated with the IOU but no sooner than December 31, 2020. If necessary, a contract extension shall be negotiated with the Prime Contractors giving a minimum of six months after the lifting of orders limiting face-to-face work.
- After face-to-face activity restrictions are lifted, and the Prime Contractor is again able to charge hours for ESA implementation activities at a rate similar to pre-restriction levels, the Prime Contractor should report the hours and the amount that would normally be invoiced for the work performed, along with an actual amount invoiced to the utility, which will be decremented to incrementally bring the funds advanced balance to zero.
- The Prime Contractor has discretion to set the schedule and increments by which they will reach a zero funds advance balance by the negotiated date, but the planned schedule should be reported to the IOU 30 days after the date the restrictions are lifted.

It is the responsibility of the Prime Contractor to strictly manage an equitable distribution of any advance payments to workers impacted by the IOUs' suspension of activities related to COVID-19 and to ensure it is used toward the intended purpose to sustain skilled workers in their positions as ESA contractors. A Prime Contractor that successfully manages the flow of funds will have the workers on board to rapidly ramp-up and invoice IOUs for actual work performed once face-to-face restrictions are lifted to resume earning profits and quickly zero-out the net funds advanced balance. In keeping with this responsibility, guidance to the Prime Contractor is as follows:

- The advance payments should not be used to pay for company profits, any materials, or other ancillary costs not related to sustaining the workforce (thus, if the Prime Contractor accepts the full amount the IOU offers, the funds advanced are expected to sustain workers for beyond a 30 day period, given that under normal circumstances the monthly amount of funds invoiced for cover these other costs).
- The Prime Contractor should offer advance payments to their eligible sub-contractors and pass through advance payment to those sub-contractors that accept advance payment.
- The Prime Contractor is to track advance payments made to sub-contractors and put measures in place to assure they in turn equitably distribute this advance payment to workers impacted, adhering to the same prohibitions described above.
- Prime Contractors are to manage tracking and reporting to the IOU holding their contracts for employees of the Prime Contractor and for eligible sub-contractor entities the Prime Contractor advances funds to. Monthly reports should be accompanied by signed affidavits of a corporate director or officer (or equivalent) of the Prime Contractor attesting to the accuracy of the reports.
- Specific tracking and reporting includes, but is not limited to, the amount of funds advanced, the number of workers these funds sustained and for how long, at what salary/hourly rate, and the employer costs for continuing the employees' benefits.
- Records tracking these employee data should be updated on a weekly basis.

Should federal or state government assistance be made available to Prime Contractors, or Prime Contractors recover lost funds from business insurance claims and/or Small Business Administration, the Prime Contractors are expected to accelerate the rate at which they zero-out their net funds advanced balance. Any future aid to Prime Contractors is uncertain until government relief programs are developed and launched, and I would expect any aid offered to be taken into consideration by the CPUC in the coming weeks when it explores longer-term options that may be appropriate and necessary.

This letter is also addressed to Small Municipal Jurisdictional Utilities implementing ESA programs to guide them if they opt to participate in offering advance payments to their eligible Prime Contractors.

The Director of the CPUC's Energy Division may recommend adjustments to the above guidance as necessary with such modifications being included in the resolution placed before the CPUC regarding this letter.

Sincerely,



Alice Stebbins
Executive Director

CC: See next page.

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Cc: President Marybel Batjer, CPUC
CPUC Commissioner Martha Guzman Aceves
CPUC Commissioner Liane Randolph
CPUC Commissioner Clifford Rechtschaffen
CPUC Commissioner Genevieve Shiroma
Maryam Ebke, Deputy Executive Director, CPUC
Lucian Filler, Deputy Executive Director, CPUC
Edward Randolph, Deputy Executive Director, CPUC
Hazel Miranda, Office of Government Affairs Director, CPUC
CPUC Service List to A.19-11-003 and A.15-02-001